STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 27, 2022)

DONOVANN HALL	:	
	:	
v.	:	**C.A. No. PM-2018-7829**
	:	
STATE OF RHODE ISLAND	:	

DECISION

MCGUIRL, J. (Ret.) Before this Court is Donovann Hall's (Petitioner or Hall) Petition for Postconviction Relief (Petition or PCR). Petitioner asserts that defense counsel denied him effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and article I, section 10 of the Rhode Island Constitution when he submitted a plea of nolo contendere and that, as a result, he wrongfully was convicted of crimes with which he had been charged and of which he maintains his innocence. Petitioner additionally contends that the plea colloquy was so defective that it must be vacated because his plea was wrongfully the product of an unlawful inducement to secure his testimony. Jurisdiction is pursuant to G.L. 1956 chapter 9.1 of title 10.

I

Facts and Travel

On July 29, 2012, the Petitioner, an eighteen-year old with a ninth-grade education, suggested to Timothy DeBritto (DeBritto) that they should rob Michael Martin (Martin), who was Petitioner's marijuana supplier and who was in possession of both drugs and money. *See* PCR

Hr'g Tr. (PCR Tr.) at 216; 229; and 239.[1] DeBritto indicated his willingness to participate in the proposed robbery, and he suggested that they use a gun to achieve their objective. *Id.* at 231. The next day, July 30, 2012, Petitioner met with DeBritto and another individual, Russell Burrell (Burrell), whereupon DeBritto provided a nine-millimeter handgun and of which Burrell took possession. *Id.* at 232-34. Petitioner did not handle the gun. *Id.* at 228 and 232-33. Petitioner and Burrell then left for Martin's apartment. *Id.* at 244.

On the way to Martin's apartment, Petitioner and Burrell were joined by another individual, Quandell Husband (Husband). *Id.* at 244. Husband was known to Petitioner, having robbed Petitioner at gunpoint earlier that summer. *Id.* at 246. Once they arrived at Martin's apartment, Petitioner knocked on the door, and when Martin opened it Burrell and Husband charged inside and announced the robbery. *Id.* at 234 and 245-46. Shortly thereafter, Burrell shot Martin. *Id.* at 234. Petitioner fled the scene immediately after the shooting. *Id.* at 235. Burrell subsequently shot two other individuals, Damien Colon (Colon) and Shameeka Barros (Barros), who also had been in the apartment at the time, and at that point, Burrell and Husband also fled the scene. *Id.* at 235-36. Two witnesses observed Burrell and Husband fleeing from the direction of the shooting. *Id.* at 113-14.

Providence Police arrested Burrell and Husband a week after the murders, but they later released both individuals. *Id.* at 250. Husband was formally arrested on October 19, 2012, and a on October 22, 2012, Burrell was formally arrested; both were held without bail. *Id.* at 67.

On August 8, 2012, the police brought Petitioner in for questioning, but he was released without charge. *Id.* at 250 and 252-53. Toward the end of February 2013, a Grand Jury was

[1] The hearing on the Petition was conducted from February 3, 2020 to February 5, 2020. The transcript from the hearing is consecutively paginated and will be cited accordingly.

empaneled for the purpose of indicting Burrell and Husband. *Id.* at 74. At that point in time, prosecutors already had secured the testimony of the two witnesses who had observed Burrell and Husband running away from the direction of the crime scene; but the police did not have testimony from anyone who actually had witnessed the shooting. *Id.* at 74-75 and 113-14.

Between August 8, 2012 and February 23, 2013, the police did not contact Petitioner. *Id.* at 253. On the morning of February 23, 2013, a Saturday, police arrested Petitioner and brought him in for questioning. *Id.* He was interrogated multiple times and had asked to see a lawyer, but he continued talking and eventually confessed to being the proponent of the robbery and to being present at Martin's house the night of the shootings. *See generally* Hall Confession. Petitioner named Burrell as the shooter, stated that Burrell and Husband were present in the house at the time of the shooting, and that DeBritto had provided the gun. *Id.* Petitioner was charged with three counts of murder, pursuant to G.L. 1956 § 11-23-1 (Counts 1-3); three counts of using a firearm in the commission of a crime of violence, pursuant to G.L. 1956 § 11-47-3.2 (Counts 3-6), and one count of conspiracy, pursuant to G.L. 1956 § 11-1-6.

On the morning of February 25, 2013, a Monday, Petitioner was arraigned in District Court on account of the robbery and triple murder of Martin, Colon, and Barros. *See State v. Hall*, 62-2013-02166 (6th Div. Dist. Ct.). A defense attorney was appointed to represent Petitioner. PCR Tr. at 67-68 and 161.

Defense counsel first met with Petitioner on February 25, 2013, and reviewed the facts of the case with Petitioner, including the confession. *Id.* at 54 and 270. By the next day, defense counsel had received a video of the confession. *Id.* at 69. Defense counsel then met again with Petitioner, where they first discussed the possibility of a deal in return for his testimony. *Id.* at 268 and 281.

At some point during that same week, defense counsel met with the Prosecutor and asked him to consider reducing the charges against Petitioner from first-degree murder to second-degree murder; however, the Prosecutor refused. *Id.* at 60. At the request of Petitioner, defense counsel then asked the Prosecutor if any of the other individuals would get a better deal than Petitioner in the event that Petitioner were to cooperate and provide testimony for the State. *Id.* at 60-61. The Prosecutor replied, "That's not going to happen." *Id.* at 61 and 78.

On Wednesday, February 27, 2013, defense counsel discussed available options with Petitioner, including the possibility of a sentencing deal in exchange for providing cooperative testimony. *Id.* at 271. Defense counsel and Petitioner met again on Thursday, February 28, 2013, and discussed a possible plea to the charges. *Id.* at 272.

On the morning of March 1, 2013, a Friday, four days after he first met defense counsel and the last scheduled day for the Grand Jury to hear testimony about the triple homicide, defense counsel met with Petitioner. *Id.* at 273-74. At the meeting, defense counsel fully reviewed a Memorandum of Agreement (Agreement) and plea form with Petitioner. *Id.* at 272 and 274-75. Petitioner once again asked if he could get a better deal than the other accused individuals. *Id.* at 275.

Based on his conversations with defense counsel, as well as the documents before him, Petitioner believed that the deal presented to him was "the best deal" that he could get. *Id.* According to Petitioner, he "was told by a member of the RI Attorney General's office that as a result of these actions, that I would be getting the 'best deal of all those charged,' and that this was the lowest that any sentence would go." Pet'r's Aff. ¶ 14. Petitioner further states that "[b]ut for these representations, I would not have agreed to plead guilty at this time." *Id.* ¶ 15.

On March 1, 2013, four days after his arraignment and meeting with defense counsel for the first time, Petitioner and defense counsel met with the Prosecutor and another attorney from the Rhode Island Department of the Attorney General and executed the Agreement. (PCR Tr. at 275-76.) Prior to signing the Agreement, Petitioner asked the Prosecutor if he was getting the best deal possible:

> "A. He [the Prosecutor] said I would get 'the best deal.' He said that, exactly what [he] said was: 'Beeper [DeBritto] is not going to get a better deal than you.' 'Russell [Burrell] is not going to get a better deal than you.' And he said: 'Husband is not going to get a better deal than you.'
> "Q. He listed all three of those people and said that?
> "A. Yes.
> "Q. He didn't testify to that yesterday.
> "A. Maybe he doesn't remember, but I do remember because at that moment that was big time in my life and I was signing my life over."
> *Id.* at 264:3-13.

In private, defense counsel asked the Prosecutor to "[m]ake sure no one gets less than [Petitioner][,]" to which the Prosecutor replied, "[Y]ou got it. . . That's not going to happen." *Id.* at 115.

The Agreement was signed by Petitioner, defense counsel, a representative of the Department of the Attorney General, and the Providence Police Department. *See* Agreement. In addition, Petitioner initialed the bottom of the Agreement on the first and second pages. *See* Agreement.

The Agreement specifically stated:

> "DONOVANN HALL understands and agrees that the provisions of RIGL section 11-23-2 mandate the imposition of a Life sentence for each of the 3 Murder Counts outlined above. In consideration of DONOVANN HALL'S performance of his promises under this Agreement, the STATE may recommend that DONOVANN HALL serve no less than three concurrent sentences of Life imprisonment nor more than three consecutive sentences of Life imprisonment. As to Count 4, the STATE shall recommend that DONOVANN HALL

> be sentenced to a term of 10 years to serve, to be served concurrently with the Life sentence(s) in Counts 1, 2, and 3. This sentence encompasses all matters truthfully disclosed to the state. DONOVANN HALL understands that the STATE will recommend the sentence, and that a Justice of the Superior Court of Rhode Island will decide whether to accept the recommendation, and that it is the Justice who determines and imposes the sentence, and not the STATE. The STATE and DONOVANN HALL agree that it is the Court that will determine the date of sentencing." Agreement ¶ 9.

The Agreement further stated that, "DONOVANN HALL understands that his sentence is not contingent upon the Department of the Attorney General securing any indictments or convictions for any individual or any criminal offense." *Id.* ¶ 10. The Agreement also contained an integration clause that provided:

> "DONOVANN HALL hereby acknowledges that this agreement represents all terms and conditions of his agreement with the STATE. No other promises, rewards or inducements have been made to DONOVANN HALL. To the extent that any such representations have been made to DONOVANN HALL at any time by any representative of the STATE, said representations are hereby null and void and the State is in no way bound by them." *Id.* ¶ 13.

Immediately after signing the documents on March 1, 2013, only six days after his arrest and four days after his arraignment, Petitioner was brought before a hearing justice who was unfamiliar with the case, and who would not be trying the other cases, to enter the plea of nolo contendere to Counts 1, 2, 3, and 7, with the three conspiracy charges being dismissed, pursuant to Rule 48(a) of the Superior Court Rules of Criminal Procedure.[2]

During the plea colloquy, the hearing justice asked Petitioner if he had thoroughly reviewed the Petition to Waive Indictment with his attorney and whether Petitioner had signed it of his own free will, to which Petitioner responded in the affirmative. *See* Plea Hr'g Tr. (Plea Tr.) at 2-3. The

[2] Counts 1-3 were for the murder of Barros, Colon, and Martin, respectively. Count 7 was for Conspiracy.

hearing justice then asked Petitioner if he understood the plea he was entering and whether he understood that by entering this plea, he was giving up his rights to a Grand Jury, to a trial, to the presumption of innocence, and to an appeal. *Id.* at 3-5. Petitioner responded "Yes" to each of these questions. *Id.* The hearing justice asked Petitioner twice whether he had any questions about the implications of waiving the indictment and trial, and he responded "No" both times. *Id.* at 3 and 5.

At that point, the Prosecutor read the facts into the record and the hearing justice then asked Petitioner if he agreed to the facts as they had been read. *Id.* at 6-8. Specifically, the hearing justice asked Petitioner if he admitted to "each of the facts stated by the prosecutor . . . and each of the offenses that he has outlined which are contained in the plea affidavit," to which Petitioner answered "Yes." *Id.* at 9. The hearing justice twice asked Petitioner if he understood that he was entering the plea of his own free will, and he answered "Yes" each time. *Id.* at 3 and 9. The hearing justice also asked defense counsel if he was satisfied that Petitioner understood and was making a knowing and voluntary waiver, to which defense counsel answered yes. *Id.* at 9.

The hearing justice then stated:

> "THE COURT: Thank you very much Mr. [Prosecutor], and Mr. [Defense Counsel], for the record, are you satisfied that Mr. Hall and you have had sufficient time to discuss the memorandum of agreement?
> "MR. [DEFENSE COUNSEL]: Yes, your Honor.
> ". . .
> "THE COURT: Mr. Hall, is your understanding regarding potential sentencing in this matter, is your understanding what . . . the prosecutor, has stated?
> "THE DEFENDANT: Yes.
> "THE COURT: Do you have any questions about that arrangement?
> "THE DEFENDANT: No." *Id.* at 10-11.

The hearing justice explained to Petitioner that the minimum sentence for the murder charges would "be no less than three concurrent life sentences and no more than three consecutive life sentences and on Count 7[,] a ten-year concurrent sentence[.]" *Id.* at 11. The hearing justice then asked Petitioner if he had any questions, to which he replied "No." *Id.* The hearing justice did not ask Petitioner whether he had been offered any promises or inducements in exchange for his plea, nor did she discuss the specific terms of the Agreement with him or explain that the Agreement was binding, as written, and that any outside conversations would not be considered. *See generally* Plea Tr.

Following his plea, that very same afternoon, Petitioner was brought before the Grand Jury and provided truthful eyewitness testimony about the events of July 30, 2012. (PCR Tr. at 111.) Petitioner was the first of the accused to cooperate with the State and, according to the Prosecutor, "[h]e was a valuable witness." *Id.* at 106 and 113. As a result of the Grand Jury proceedings and Petitioner's testimony, Burrell, Husband, and DeBritto were indicted for the same crimes as Petitioner. *See* P1-2013-0725CG, *State v. DeBritto,* Docket Sheet; *See* P1-2013-0725AG, *State v. Burrell*, Docket Sheet; and P1-2013-0725BG, *State v. Husband*, Docket Sheet.

Almost two years later, on January 30, 2015, Petitioner returned for a sentencing hearing before the same hearing justice, where he received a concurrent life sentence for his involvement in the murder of Martin, Colon, and Barros. *See* P1-2013-0722AG, Docket Sheet. In the intervening twenty-three months between the date of Petitioner's plea and the date of his sentencing, the following events took place:

On March 14, 2014, the State amended DeBritto's three murder charges from first-degree murder to second-degree murder and the three charges of discharge of a firearm in the course of violent crime to the use of a firearm in the course of a violent crime. *See* P1-2013-0725CG *State*

v. DeBritto, Docket Sheet. The conspiracy charge was not amended. *Id.* DeBritto then pled guilty to the charges, as amended, and he was sentenced to a forty-year term of imprisonment to be served concurrently with his then-current forty-year sentence for an unrelated felonious assault. *Id.* In addition, DeBritto was sentenced to a concurrent ten-year term of imprisonment for conspiracy and a twenty-year consecutive term of imprisonment for the use of a firearm, which sentence was suspended with probation. *Id.* The same Prosecutor in Petitioner's case served as the prosecuting attorney on the DeBritto case.

On July 28, 2014, Husband, who was sixteen at the time of the triple murders, was tried and found guilty on all counts by a jury. *See State v. Husband*, 162 A.3d 646 (R.I. 2017). The same Prosecutor also served as the State's attorney in that case and, as he had promised in his cooperation agreement, Petitioner provided the State testimony and gave a first-hand witness account of the shooting. Thereafter, "the Superior Court sentenced [Husband] to three concurrent life sentences for first-degree murder, three concurrent life sentences for discharging a firearm during a crime of violence (to be served consecutively to the murder sentences), and ten years of incarceration for conspiracy (to be served consecutively to the firearm sentences)." *Id.* at 651.

However, on June 21, 2017, the Rhode Island Supreme Court vacated Husband's sentence and remanded it to Superior Court. *See id.* at 646. Thereafter, on December 20, 2017, Husband pled guilty to one count of assault with intent to commit specified felonies, for which he received a twenty-year term of imprisonment, and one count of conspiracy, for which he received a consecutive ten-year term of imprisonment. *See* P1-2013-0725BG, *State v. Husband*, Docket Sheet. The five other counts were dismissed pursuant to Rule 48(a) of the Superior Court Rules of Criminal Procedure. *See id.*

On December 22, 2014, Burrell pled nolo contendere to all charges. *See* P1-2013-0725AG, *State v. Burrell*, Docket Sheet. Burrell was sentenced to three consecutive terms of life imprisonment for the murders, and concurrent terms of life imprisonment for the firearms charges, to be served consecutive to life sentences for murder. *See id.* In addition, Burrell was sentenced to ten years of imprisonment for the conspiracy charge, to be served consecutive to the life sentences for the firearms charges. *See id.*

When defense counsel later asked the Prosecutor why DeBritto and Husband received lower sentences than Petitioner, according to defense counsel, the Prosecutor responded, '"Things changed[,]' [and that] 'Husband's conviction got overturned.'" (PCR Tr. at 80.) The Prosecutor did not deny their previous conversations about Petitioner receiving a lesser sentence than his co-conspirators. *Id.*

Just prior to his sentencing on January 30, 2015, Petitioner met again with the Prosecutor and specifically asked the Prosecutor, "Why did 'Beeper,' DeBritto, get a 40-year sentence?" *Id.* at 262. According to Petitioner, the Prosecutor responded: "[B]ecause he [DeBritto] played a lesser role than [you] did." *Id.* at 262. According to the Prosecutor, he later apologized to Petitioner after Petitioner received a higher sentence than DeBritto. *Id.* at 171.

On October 31, 2018, Petitioner filed the instant PCR Petition. In his PCR Application, Petitioner alleges that "[i]n light of Donovann Hall's cooperation, members of the Rhode Island Attorney General's office assured the [P]etitioner that he was getting the best terms and sentence for his cooperation and testimony." Pet. ¶ 35. "These statements were reaffirmed by his court appointed counsel, who had advised him that the plea deal offered to the petitioner was in his best interest to accept." *Id.* ¶ 36. "Due to these promises and inducements of receiving the most lenient sentence of all those involved, the [P]etitioner agreed to provide the witness statement and then

plead nolo contendere." *Id.* ¶ 37. However, after stating that "Quandell Husband, a co-defendant in my case, was sentenced to 20 years, which is a more lenient sentence than the one that I had received after my cooperation and admissions[,]" Petitioner stated that he "feel[s] that promises were made to me by the State of Rhode Island that were later broken, and that these promises were the reasons I changed my plea." Pet'r's Aff. ¶¶ 17-18.

After carefully reviewing the record and the evidence, the Court now will render its Decision. Additional facts will be provided in the Analysis portion of this Decision.

II

Standard of Review

It is well settled that pursuant to "§ 10-9.1-1, postconviction relief is a remedy 'available to a convicted defendant who contends that his original conviction or sentence violated rights afforded to him under the state or federal constitution.'" *Whitaker v. State*, 199 A.3d 1021, 1026 (R.I. 2019) (quoting *Barros v. State*, 180 A.3d 823, 828 (R.I. 2018)); *see also Lyons v. State*, 43 A.3d 62, 64 (R.I. 2012) ("[O]ne who has been convicted of a crime may seek collateral review of that conviction based on alleged violations of his or her constitutional rights.") (internal quotation omitted). Such actions are civil in nature and governed by all of the rules and statutes that are applicable in civil proceedings. *See* § 10-9.1-7 ("All rules and statutes applicable in civil proceedings shall apply . . . ."); *see also Lyons*, 43 A.3d at 64 (stating "[a]pplication[s] for postconviction relief [are] civil in nature") (internal quotation omitted). In challenging his or her conviction, an applicant has '"[t]he burden of proving, by a preponderance of the evidence, that such [postconviction] relief is warranted[.]'" *Whitaker*, 199 A.3d at 1026 (quoting *Navarro v. State*, 187 A.3d 317, 325 (R.I. 2018)).

III

Analysis

Petitioner asserts that defense counsel denied him effective assistance of counsel and that, as a result, he wrongfully was convicted of crimes with which he had been charged and of which he maintains his innocence. Petitioner additionally asserts that the plea colloquy before the hearing justice was so defective that the plea must be vacated. Finally, Petitioner maintains that his plea was wrongfully the product of an unlawful inducement to secure his testimony.

A

Ineffective Assistance of Counsel

Petitioner alleges that his attorney was deficient in several respects. First, Petitioner contends that upon meeting Petitioner for the first time, "all conversations immediately focused on securing a witness cooperation agreement" and that his attorney allowed Petitioner to plead guilty only four days after their initial meeting. *See* Pet'r's Mem. in Supp. Appl. PCR (Pet'r's Mem.) 7. Second, Petitioner maintains defense counsel encouraged him to plead guilty before fully reviewing the confession video with him or before filing any motions to suppress. *Id.* at 7-8. Petitioner also maintains that his attorney did not consider Petitioner's young age and failure to finish high school when he encouraged Petitioner to plead. *Id.* at 8.

The primary means by which a petitioner may seek to overturn a plea of nolo contendere is by alleging ineffective assistance of counsel. '"[T]he benchmark issue is whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.'" *Whitaker*, 199 A.3d at 1027 (quoting *Barros*, 180 A.3d at 828).

An allegation of ineffective assistance of counsel is reviewed under the two-pronged approach set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *See also Navarro*, 187 A.3d at 325; *Reyes v. State*, 141 A.3d 644, 654 (R.I. 2016). Our Supreme Court succinctly enunciated the *Strickland* requirements that an applicant must satisfy in order to prevail on a claim for ineffective assistance of counsel. *Whitaker*, 199 A.3d at 1027. Accordingly,

> "First, the applicant must demonstrate that counsel's performance was deficient, to the point that the errors were so serious that trial counsel did not function at the level guaranteed by the Sixth Amendment. This prong can be satisfied only by a showing that counsel's representation fell below an objective standard of reasonableness. In evaluating counsel's performance, [the Court] keep[s] in mind that there is a strong presumption . . . that an attorney's performance falls within the range of reasonable professional assistance and sound strategy[.]
>
> "Second, the defendant must show that the deficient performance prejudiced the defense. Specifically, the second prong of *Strickland* requires the applicant to demonstrate that the deficient performance was so prejudicial to the defense and the errors were so serious as to amount to a deprivation of the applicant's right to a fair trial. In other words, the applicant must show that there is a reasonable probability that, *but for* counsel's unprofessional errors, the result of the proceeding would have been different. [The Court previously has] held that [t]his is a highly demanding and heavy burden." *Id*. (internal citations and quotations omitted).

See also Rice v. State, 38 A.3d 9, 16-17 (R.I. 2012) (an applicant "is saddled with a heavy burden, in that there exists a strong presumption [recognized by this Court] that an attorney's performance falls within the range of reasonable professional assistance and sound strategy . . .") (internal quotations omitted); *Jaiman v. State*, 55 A.3d 224, 238 (R.I. 2012) ("Recognizing the difficulties inherent in [an ineffective assistance of counsel] evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional

assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.") (internal quotations omitted).

Indeed, this Court must avoid "second-guess[ing] counsel's assistance after conviction or adverse sentence[,] [because] it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Id*. (internal quotations omitted).

Rather, in order to conduct a fair assessment of a trial counsel's performance, the Court must make every effort "to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Id.* Thus, our Supreme Court has instructed that a defense counsel's performance should be considered "in its entirety, and 'when that performance is deficient in a number of respects, then the possibility is greater that an accumulation of serious shortcomings prejudiced the defendant to a sufficient degree to meet the *Strickland* requirement."' *Hazard v. State*, 64 A.3d 749, 756 (R.I. 2013) (quoting *Brown v. State*, 964 A.2d 516, 528 (R.I. 2009)).

Generally, it is only when the assistance of counsel is determined to have been constitutionally deficient will the Court proceed to the second prong of the analysis. *Merida v. State*, 93 A.3d 545, 549 (R.I. 2014). However, when applying *Strickland* to a plea situation, the emphases of these prongs change, particularly with respect to the second prong. *See State v. Gibson*, 182 A.3d 540, 552 (R.I. 2018) ("'[I]n the case of someone who has entered a plea of *nolo contendere*, [t]he sole focus of an application for post-conviction relief . . . is the nature of counsel's advice concerning the plea and the voluntariness of the plea.'") (quoting *Guerrero v. State*, 47 A.3d 289, 300 (R.I. 2012)). '"When evaluating a claim for ineffective assistance of counsel in a plea situation, the defendant must demonstrate a reasonable probability that but for

counsel's errors, he or she would not have pleaded guilty and would have insisted on going to trial' and, importantly, that the outcome of the trial would have been different." *Neufville v. State*, 13 A.3d 607, 610-11 (R.I. 2011) (quoting *State v. Figueroa*, 639 A.2d 495, 500 (R.I. 1994)).

It is well settled '"that the decision to enter a plea of *nolo contendere* . . . 'is not one to be taken lightly.'" *Gibson*, 182 A.3d at 552 (quoting *Guerrero*, 47 A.3d at 300)). The reason for this is that '"[i]n Rhode Island, a plea of nolo contendere is treated as a guilty plea."' *Gibson*, 182 A.3d at 552, n.15 (quoting *Guerrero*, 47 A.3d at 300 n.12). By entering such plea, a defendant "'waives several federal constitutional rights and consents to [the] judgment of the court.'" *Camacho v. State*, 58 A.3d 182, 186 (R.I. 2013) (quoting *State v. Feng*, 421 A.2d 1258, 1266 (R.I. 1980)).

Rule 11 of the Superior Court Rules of Criminal Procedure "sets forth the manner in which a trial justice must conduct a plea proceeding to ensure that there is compliance with constitutional requirements." *Camacho*, 58 A.3d at 186. Rule 11 mandates "that the Superior Court 'shall not accept . . . a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea.'" *Id.* (quoting Super. R. Crim. P. 11). "[A] plea will be vacated when it is shown to have been obtained from a defendant unaware and uninformed as to its nature and its effect as a waiver of his fundamental rights." *Figueroa*, 639 A.2d at 498 (internal quotation omitted). A petitioner who claims a violation of Rule 11 "bear[s] the burden of proving by a preponderance of the evidence that [she or he] did not intelligently and understandingly waive [her or his] rights." *Id.*

Notwithstanding the foregoing, our Supreme Court has declared that

> "Rule 11 is not intended to serve as a trap for those justices who fail to enumerate each fact relied on to accept such a plea. [A]t the

> conclusion of a plea hearing, the trial justice should be able to say with assurance that the accused is fully aware of the nature of the charge and the consequences of the plea. As we have explained,
>
> > "[t]hat objective may be attained by:
> >
> > > "(1) an explanation of the essential elements by the judge at the guilty plea hearing;
> > > "(2) a representation that counsel had explained to the defendant the elements he admits by his plea [footnote omitted];
> > > "(3) defendant's statements admitting to facts constituting the unexplained element or stipulations to such facts.
>
> "Thus, the standard is not whether the trial court sufficiently made a detailed explanation of the charges, element by element, and fact by fact, but, more importantly, whether the defendant understood them. A finding may be based on the record viewed in its totality." *Camacho*, 58 A.3d at 186 (internal citations and quotations omitted; footnote omitted in original).

In the instant matter, Petitioner alleges that defense counsel was deficient in the following respects: (1) he allowed Petitioner to plead guilty only four days after he'd met Petitioner (Pet'r's Mem. at 7); (2) that "all conversations immediately focused on securing a witness cooperation agreement," *id.*; (3) that defense counsel failed to take into account that Petitioner was only eighteen years old and had not finished high school when he encouraged the plea, *id.* at 8; and (4) that defense counsel had encouraged Petitioner to plead guilty without having fully reviewed the confession video with Petitioner or by filing any motions to suppress. *Id.* at 7-8.

Petitioner also alleges that the hearing justice failed to make "inquiries that are customarily asked in most plea colloquies[, s]uch . . . as how far [the Petitioner] went through school, and whether or not the person was under the influence of alcohol or drugs that may affect their ability to understand what was going on. . . ." *Id.* at 4. In addition, the Petitioner alleges that the hearing justice "did not ask [defense counsel] if he had gone through the elements of the charges and explained them to the defendant before accepting this plea." *Id.* at 5.

The Court will consider these issues in turn.

1

The Alleged Rush to Plea

Petitioner essentially contends that defense counsel allowed Petitioner to plead guilty only four days after he'd met Petitioner and that this amounted to undue pressure, thus rendering the plea involuntary.

However, "[m]erely because [a defense counsel] attempted to persuade [a] [p]etitioner that it was in his [or her] best interest to plea does not lead to the conclusion that his [or her] . . . plea was involuntary." *Miles v. Dorsey*, 61 F.3d 1459, 1470 (10th Cir. 1995). Indeed, "one central component of a lawyer's job is to assimilate and synthesize information from numerous sources and then advise clients about what is perceived to be in their best interests." *Fields v. Gibson*, 277 F.3d 1203, 1214 (10th Cir. 2002). Thus, "'[a]dvice—even strong urging' by counsel does not invalidate a guilty plea.'" *Id*. (quoting *Williams v. Chrans*, 945 F.2d 926, 933 (7th Cir. 1991)). Furthermore "[a]lthough deadlines, mental anguish, depression, and stress are inevitable hallmarks of pretrial plea discussions, such factors considered individually or in aggregate do not establish that [p]etitioner's plea was involuntary." *Miles*, 61 F.3d at 1470.

There is no question that the period of time between Petitioner's arraignment and his plea was short and was motivated, in large part, by the State's interest in having Petitioner testify before the Grand Jury against co-conspirators Burrell and Husband. However, there is no evidence that defense counsel coerced Petitioner into his plea or that a longer timeframe would have changed defense counsel's legal advice. The record reveals that the police provided defense counsel with a transcript of Petitioner's videotaped confession, as well as a videotape of the confession itself,

and that during his consultation with defense counsel, Petitioner admitted to the crime and to making the confession.

Defense counsel assimilated and synthesized this information and reasoned that Petitioner's best option would be to enter into a plea agreement in which Petitioner would get a sentence that was lower than the maximum Petitioner faced in return for cooperating with the prosecution by providing testimony against his co-conspirators. There is nothing in the record to indicate that more time would have caused defense counsel to alter his reasoned determination and advice.

Given the overwhelming evidence that the prosecution had against Petitioner for the triple murders, the Court finds that defense counsel's "advice—even strong urging" that Petitioner enter into a plea agreement only days after the arraignment does not establish that Petitioner's plea was involuntary. *See Fields,* 277 F.3d at 1214; *Miles,* 61 F.3d at 1470. Accordingly, the Court concludes that even if Petitioner felt pressure when he accepted defense counsel's reasoned advice to enter the plea, it does not invalidate Petitioner's plea of nolo contendere.

2

Failure to Review Confession with Petitioner or File a Motion to Suppress

Petitioner contends that defense counsel's failure to file any motions to suppress and failure to fully review the videotaped confession with Petitioner prior to Petitioner's plea constituted ineffective assistance of counsel.

It is axiomatic that a defense "counsel has a duty to investigate his [or her] client's case . . . ." *Neufville,* 13 A.3d at 612. However, as previously stated, a petitioner "is saddled with a heavy burden, in that there exists a strong presumption [recognized by this Court] that an attorney's performance falls within the range of reasonable professional assistance and sound strategy . . . ."

Rice, 38 A.3d at 16-17 (internal quotations omitted). Furthermore, there exists "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Jaiman*, 55 A.3d at 238 (internal quotations omitted). This Court must make every effort "to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Id.* (internal quotation omitted). Thus, the Court must consider a defense counsel's performance "in its entirety, and 'when that performance is deficient in a number of respects, then the possibility is greater that an accumulation of serious shortcomings prejudiced the defendant to a sufficient degree to meet the *Strickland* requirement."' *Hazard*, 64 A.3d at 756 (quoting *Brown*, 964 A.2d at 528).

In *Neufville*, our Supreme Court stated that where a "record shows that counsel had a complete criminal information package, was aware of the strength of the state's evidence and the accused did not point to any exculpatory evidence that would have affected [his or] her plea, counsel's failure to seek discovery did not amount to constitutionally deficient representation[.]" *Neufville*, 13 A.3d at 612 (citing *Rodrigues v. State*, 985 A.2d 311, 316-17 (R.I. 2009)). In doing so, the court "reject[ed] applicant's contentions that counsel's failure to file certain pretrial motions amounted to ineffective assistance of counsel." *Neufville*, 13 A.3d at 612.

Here, Petitioner has alleged that defense counsel met with him approximately two or three times over the course of less than a week, meaning that defense counsel met with Petitioner almost daily during the critical time when Petitioner was deciding whether or not to plead guilty. Furthermore, although defense counsel failed to file a motion to suppress the confession video or

to fully review it with Petitioner prior to the plea, defense counsel reviewed the video and discussed its implications with Petitioner during these meetings.

Defense counsel is an experienced and well-respected Rhode Island attorney, having been in practice for over thirty-six years. Accordingly, there is a "strong presumption" that his opinion regarding the damage of the confession and the strength of the State's case fell "within the wide range of reasonable professional assistance . . . [and that] the challenged action [can] be considered sound trial strategy." *Jaiman*, 55 A.3d at 238. Accordingly, this Court will not second-guess defense counsel's decisions with regard to his advice to Petitioner and concludes that such advice did not amount to ineffective assistance of counsel.

3

Voluntariness of the Plea Agreement

The remaining claims of ineffective assistance of counsel—specifically, defense counsel's failure to take into account Petitioner's age and lack of education—relate to Petitioner's ability to understand the nature and consequences of his decision to plead nolo contendere. Petitioner maintains that defense counsel should have taken these factors into account before encouraging Petitioner to plea. An allegation of ineffective assistance of counsel that involves a question of counsel's assessment of a petitioner's competence to provide a plea necessarily involves the question of the Court's own assessment and the fulfillment of Rule 11 requirements. Accordingly, the Court will now turn to the question of whether Rule 11 was satisfied.

Petitioner alleges that the hearing justice failed to inquire about his ability to understand the plea he entered, particularly regarding his educational background, his ability to read and write English, and whether he was at that time under the influence of any substances that might have

affected his comprehension. Petitioner also alleges that the hearing justice failed to ask if any promises or inducements were made to secure his plea.

It is well settled that '"before accepting a plea of guilty or *nolo contendere*, the Superior Court justice [is] obliged to determine whether a criminal defendant was aware of the nature of a plea and its effect on his or her fundamental rights, including the right to a jury trial.'" *State v. Thomas*, 794 A.2d 990, 993 (R.I. 2002) (quoting *Ouimette v. State*, 785 A.2d 1132, 1135 (R.I. 2001)). "[T]he standard is not whether the trial court sufficiently made a detailed explanation of the charges, element by element, and fact by fact, but, more importantly, whether the defendant understood them." *Camacho*, 58 A.3d at 186 (citing *Henderson v. Morgan*, 426 U.S. 637, 644–45 (1976)).

"The rule does not specify the extent or content of the colloquy. . . the trial court should engage in as extensive an interchange as necessary so that 'the record as a whole and the circumstances in their totality' will disclose to a court reviewing a guilty or nolo plea that the defendant understood the nature of the charge and the consequences of the plea." *Feng*, 421 A.2d at 1267 (quoting *Williams*, 404 A.2d at 820). "[D]efendants bear the burden of proving by a preponderance of the evidence that they did not intelligently and understandingly waive their rights." *Figueroa*, 639 A.2d at 498.

A plea will be found to be voluntary if the record reflects the following:

> "(1) an explanation of the essential elements by the judge at the guilty plea hearing;
> "(2) a representation that counsel had explained to the defendant the elements he admits by his plea (footnote omitted);
> "(3) defendant's statements admitting to facts constituting the unexplained element or stipulations to such facts." *State v. Williams*, 122 R.I. 32, 41, 404 A.2d 814, 819 (1979).

With respect to Petitioner's allegation that his plea was invalid because defense counsel and the hearing justice failed to consider whether his age and lack of education rendered him incompetent to plead nolo contendere, the Court recognizes that "to plead guilty, a defendant must demonstrate the same level of competence as is necessary to stand trial." *Thomas*, 794 A.2d at 994 (citing *Godinez v. Moran*, 509 U.S. 389, 398-99 (1993)). '"[T]he focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the *ability* to understand the proceedings.'" *Thomas*, 794 A.2d at 994 (quoting *Godinez*, 509 U.S. at 401 n.12).

Our Supreme Court has declared that

> '"in order for a court to permit an accused to be subject to a criminal prosecution, 'three things must be found: first, that defendant understands the nature of the charges brought against him; second, that defendant appreciates the purpose and object of the trial proceedings based thereon; and third, that defendant has the mental capacity to assist reasonably and rationally his counsel in preparing and putting forth a defense to the criminal charges of which he stands accused.'" *Thomas*, 794 A.2d at 994 (quoting *State v. Buxton*, 643 A.2d 172, 175 (R.I. 1994)).

In the instant matter, the Court is satisfied that the hearing justice's inquiry of Petitioner at the plea hearing was compliant with Rule 11. The hearing justice personally addressed Petitioner and established on the record that Petitioner had signed the "Petition to Waive Indictment" after having "review[ed] [the] document thoroughly with [defense counsel]." (Plea Tr. at 2.) The hearing justice then informed Petitioner what he would be giving up by submitting a plea and inquired about his understanding of the consequences of his plea. *Id*. at 2-3. The hearing justice also asked Petitioner whether he had any questions about the nature and consequences of his plea, to which Petitioner responded, "No." *Id.* at 5. The hearing justice had Petitioner confirm that he was entering the plea of his own free will and asked the Prosecutor to read the factual basis of the charges into the record. *Id.* After the facts were read, the hearing justice confirmed with Petitioner

that he admitted to all the facts presented by the Prosecutor. *Id.* at 9. The hearing justice also confirmed with defense counsel that he was satisfied that Petitioner was intelligently, voluntarily, and knowingly waiving his rights. *Id.*

Although several questions commonly asked at plea colloquies were not raised by the trial justice at the Petitioner's colloquy, these questions were not required to establish the voluntariness of his plea; rather, what was required was a clear demonstration that Petitioner understood his rights and was voluntarily relinquishing them. *See State v. Frazar*, 822 A.2d 931, 936 (R.I. 2003) (stating "although Rule 11 was adopted 'to safeguard the rights of criminal defendants who plead guilty or nolo contendere; it did not intend that the rule serve as a trap for those justices who fail to enumerate each fact relied on to accept such a plea'") (quoting *Feng*, 421 A.2d at 1269).

This Court finds that Petitioner's plea, when viewed in its totality, was knowing, intelligent and voluntary. The Court further finds that the hearing justice fulfilled Rule 11's requirements by personally addressing Petitioner and determining that Petitioner's responses were satisfactory with respect to his voluntariness and his understanding of the rights that he was waiving and the facts to which he was admitting by entering his plea of nolo contendere.

Thus, the Court finds that the hearing justice's colloquy was clear when she discerned that Petitioner knew and understood the nature of the proceedings and that he voluntarily gave up his rights. Accordingly, there is no evidence in the record that Petitioner's plea was not voluntarily or intelligently given at the time he offered it on March 1, 2013.

4

Promises or Inducements

Petitioner maintains that the hearing justice failed to inquire about whether the plea was a result of "promises or inducements or threats or coercion." (Pet'r's Mem. at 6.) It is undisputed

that all parties agree that the Prosecutor made a promise to Petitioner during the plea negotiations that Petitioner would get "the best deal" of all the co-conspirators. (PCR Tr. 61; 78; 264.)

The State contends that any parol evidence, either oral or written, should not be considered where the terms of an agreement, such as the one at issue, are unambiguous. State's Mem. of Law Supp. Obj. to Appl. for PCR (State's Mem.) at 21. The State further alleges that this is particularly true when the agreement contains an integration clause stating that the writing is the complete agreement of the parties. *Id.* Thus, the issue before the Court is whether a plea, validly accepted as voluntary at the time it was proffered, can alter in its character based upon later events, when there exists a signed cooperation agreement that contains an integration clause.

In Rhode Island, "[t]he disposition of criminal charges by agreement between the prosecutor and the accused has become an essential part of the administration of criminal justice and is highly desirable for many reasons." *State v. Freeman*, 115, R.I. 523, 531, 351 A.2d 824, 828 (1976) (citing *Brady v. United States*, 397 U.S. 742, 751-52 (1970)). Accordingly,

> "[a] plea to a criminal charge by a defendant and the acceptance of such a plea by the court must be accompanied by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Freeman*, 115 R.I. at 531, 351 A.2d at 828 (citing *Santobello v. New York*, 404 U.S. 257, 262 (1971)).

"A guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void. A conviction based upon such a plea is open to collateral attack." *Machibroda v. United States*, 368 U.S. 487, 493 (1962).

Our Supreme Court has declared that

> "A plea agreement is a contract between the defendant and the prosecuting body. *See United States v. Conway*, 81 F.3d 15, 17 (1st

> Cir.1996). Accordingly, such an agreement will be interpreted pursuant to the law of contracts. *See United States v. Kamer*, 781 F.2d 1380, 1387 (9th Cir.1986). The remedy for a breach of a plea agreement is either 'withdrawal of the plea or enforcement of the plea bargain agreement.'" *Retirement Board of Employees' Retirement System of State v. DiPrete*, 845 A.2d 270, 283 (R.I. 2004) (quoting *State v. Freeman*, 115 R.I. 523, 535, 351 A.2d 824, 830 (1976)).

The analysis of a plea agreement begins with "the language of the document." *United States v. Anderson*, 921 F.2d 335, 337–38 (1st Cir. 1990). "Plea agreements are contractual in nature and should be interpreted according to general contract principles. Due process may be violated if there is a breach of a promise that induced a guilty plea." *United States v. Sanchez*, 508 F.3d 456, 460 (8th Cir. 2007) (internal citation omitted). "Hence, plea agreements get a contract law analysis . . . tempered with an awareness of 'due process concerns for fairness and . . . adequacy.'" *United States v. Gottesman*, 122 F.3d 150, 152 (2nd Cir. 1997) (quoting *United States v. Ready*, 82 F.3d 551, 558 (2nd Cir. 1996)).

Accordingly, "plea agreements are significantly different from commercial contracts" and "'[c]omparing a criminal defendant with a merchant in the marketplace is an inappropriate analogy . . . .'" *United States v. Feldman*, 939 F.3d 182, 189 (2d Cir. 2019) (quoting *Innes v. Dalsheim*, 864 F.2d 974, 978 (2d Cir. 1988)). Indeed,

> "courts have consistently made clear that a prosecutor entering into a plea bargain agreement is not simply a party to a contract. The Government is required to observe high standards of integrity and honorable conduct, and the supervisory power of the court is designed to insure that such standards are observed." *United States v. Mozer*, 828 F. Supp. 208, 215 (S.D.N.Y. 1993) (citing *United States v. Hasting*, 461 U.S. 499, 505, (1983); *Santobello*, 404 U.S. at 262).

This is because "[a] plea agreement . . . is not simply a contract between two parties. It necessarily implicates the integrity of the criminal justice system and requires the courts to exercise judicial

authority in considering the plea agreement and in accepting or rejecting the plea" *United States v. McGovern*, 822 F.2d 739, 743 (8th Cir. 1987).

The burden of establishing a breach is upon the party asserting said breach. *See United States v. Smith*, 429 F.3d 620, 630 (6th Cir. 2005) ("The party asserting the breach—here, the Defendant—has the burden of establishing a breach."). Nevertheless, "[a] review of a plea agreement is not limited to its four corners," and should be construed '"strictly against the government."' *Feldman*, 939 F.3d at 189 (internal citation omitted) (quoting *United States v. Vaval*, 404 F.3d 144, 152 (2d Cir. 2005)). "Government conduct in negotiating plea agreements must 'comport[ ] with the highest standard of fairness.' Because such agreements involve waivers of fundamental constitutional rights, 'prosecutors are held to meticulous standards of performance.'" *Id.* (quoting *Vaval*, 404 F.3d at 152-53).

However, "[a]bsent special circumstances, a defendant—quite as much as the government—is bound by a plea agreement that recites that it is a complete statement of the parties' commitments." *United States v. Connolly*, 51 F.3d 1, 3 (1st Cir. 1995). Accordingly, "[a]n integration clause *normally* prevents a criminal defendant, who has entered into a plea agreement, from asserting that the government made oral promises to him not contained in the plea agreement itself." *United States v. Hunt*, 205 F.3d 931, 935 (6th Cir. 2000) (emphasis added) (citing *Peavy v. United States*, 31 F.3d 1341, 1345 (6th Cir. 1994)).

The *Hunt* Court described the following situation:

> "In *Peavy*, the defendant pled guilty to distribution of cocaine. His Rule 11 plea agreement contained an integration clause. After sentencing, he claimed to have had an oral arrangement with [agents from the FBI] to reduce his sentence if he cooperated in an ongoing FBI investigation. He further claimed the government failed to live up to its end of the bargain after he provided the cooperation requested. Accordingly, defendant sought a hearing at which to contest his guilty plea. Defendant's attorney, who was with him at

> the time the government's alleged promise was made, filed an affidavit with the district court attesting to the existence of an oral promise.
>
> "The government in Peavy conceded that it had entered into [an] oral promise with the defendant, and that the promise was omitted from the plea agreement. But the government disputed the terms of the oral promise." *Hunt*, 205 F.3d at 935 (citing *Peavy*, 31 F.3d at 1345).

Similar to the case at bar, Peavy had signed a plea agreement that contained an integration clause. *Id.* Furthermore,

> "The parties made no reference to a cooperation agreement during the plea hearing, and there is no evidence that the district court was aware of the agreement when it accepted Peavy's plea. [Also], the court did not ask Peavy whether there were any promises apart from the plea agreement. Such inquiry would have prompted disclosure of the promises on which Peavy relies here, or, if Peavy had remained silent, likely would foreclose his postconviction reliance on these promises." *Peavy*, 31 F.3d at 1345.

However, "[t]he court's omission [in *Peavy*] [wa]s not the sole cause of the incomplete record in th[at] case, [because] . . . the parties' silence regarding Peavy's cooperation agreement was deliberate." *Id.*

In *State v. Welch*, 112 R.I. 321, 309 A.2d 128 (1973), the defendant received assurances from the prosecutor that, if he pled nolo contendere, he would receive eighteen months to be served concurrently with another sentence. *Welch*, 112 R.I. at 331, 309 A.2d at 133. When he was sentenced more harshly than the purported agreement, defense counsel immediately sought, in open court, to withdraw the plea and, in doing so, the prosecutor admitted to making the agreement. *Id*. at 323-24, 309 A.2d at 129-30. The Superior Court justice denied the motion. *Id.* at 324, 309 A.2d at 130.

On appeal, our Supreme Court agreed that a prosecutor's representations, admitted in open court, are sufficient to rule a plea involuntary and to permit it to be vacated by holding:

> "[W]hile mere advice or assurances of counsel as to a light sentence will not vitiate his client's guilty plea, a contrary rule should prevail if the counsel's statement amounts to an unqualified representation that some responsible state official such as a judge or a prosecutor has entered into a bargain to commit the state to give the defendant a lesser punishment than he might otherwise receive, in exchange for a plea, provided such representation is corroborated by the acts or statements of the responsible state official and there is a bona fide reliance thereon by the defendant." *Id.* at 331, 309 A.2d at 133.

As previously stated, the Agreement at issue in this case states, in pertinent part:

> "10. DONOVANN HALL understands that his sentence is not contingent upon the Department of the Attorney General securing any indictments or convictions for any individual or any criminal offense.
>
> ". . .
>
> "13. DONOVANN HALL hereby acknowledges that this agreement represents all terms and conditions of his agreement with the STATE. No other promises, rewards or inducements have been made to DONOVANN HALL. To the extent that any such representations have been made to DONOVANN HALL at any time by any representative of the STATE, said representations are hereby null and void and the State is in no way bound by them." Agreement ¶¶ 10, 13.

The State maintains that the integration clause contained in Paragraph 13 absolves the State of any promises made to Petitioner prior to the signing of the Agreement, because "[t]he clause is clear and unambiguous. It clearly sets forth the fact that the written agreement is the entire agreement between the parties." (State's Mem. at 22.)

At the PCR hearing, the following colloquy took place between the Prosecutor and Petitioner's attorney:

> "Q: Now, besides the agreement that you made with them and the three days between [Petitioner's] actual arraignment in District Court and his plea and presentment and testimony before the Grand Jury, did you have a conversation with [defense counsel] as far as how Mr. Hall's sentence would play out in comparison to the three co-defendants?

> "A: Yes.
> "Q: And what was the nature of that conversation?
> "A: My memory is that it was on the fourth floor. It was around the time, because that day Mr. Hall met with us on the fourth floor, we reviewed the cooperation agreement. I believe Mr. Hall's grandparents were allowed to talk to him. And then after that, we went up before [the hearing justice] and conducted the waiver and the plea, and then after that we went to Grand Jury, I believe it was on the fourth floor that [defense counsel] asked me—and I'm paraphrasing [here], he said something to the effect that: 'Make sure no one gets less than Donovann.'
> "I said, 'Yes, you got it,' It was in passing."
> ". . .
> "Q: Did you basically make assurances to Donovann Hall and to [defense counsel] that no one would get a better sentence than he, out of the four, in return for his cooperation?
> "A: At the time I did, yes." (PCR Tr. at 114-15.)

A subsequent colloquy between Petitioner's counsel and the Prosecutor revealed the following:

> "Q: Was it your intention at the time that you had that offhand conversation with [defense counsel] that Donovann Hall would in fact get the best deal:
> "A: Yes.
> "Q: Why was that?
> "A: Because Donovann Hall was the first to cooperate. He provided what we believed to be 'truthful testimony." He went to the Grand Jury and – that's –
> "Q: Okay.
> "A: That's the reason." (PCR Tr. at 134.)

Later at the PCR hearing, the Court asked the Prosecutor a series of questions as follows:

> "THE COURT: Now, we've been through this a couple of times, [defense counsel], despite what is said in the [A]greement, remembers, and I think you remember, you both agree that there was a brief conversation between the time the [A]greement was signed and before he went to the Grand Jury, that [defense counsel] said something to the effect of: 'No one is going to get a lesser time to serve?'
> "THE [PROSECUTOR]: Yes.
> "THE COURT: And you either said yes – you said something. He quoted you as to what was said: 'You got it. It's not going to happen.' Right?

"THE [PROSECUTOR]: Yes.
"THE COURT: No, there's no question, not disputing that?
"THE [PROSECUTOR]: I am not disputing that at all, that happens a lot when dealing with these kinds of cases.
"THE COURT: Hold on a minute. So there's no question about that?
"THE [PROSECUTOR]: Yup.
"THE COURT: And that was clearly your intention at that time?
"THE [PROSECUTOR]: Yes.
"THE COURT: You would not have said it to him if you did not mean it at the time?
"THE [PROSECUTOR]: Absolutely.
". . .
"THE COURT: Did you consider it to be an agreement that you made with [defense counsel]?
"THE [PROSECUTOR]: An agreement? Yes, it was. Like I said before, we've done it in other, not me, myself and [defense counsel], we try to hold a line. So I wanted to say: 'Yeah,' you know, I wanted to acknowledge he was, first he plead, and so I wanted to give him kind of some assurances that, yeah --
". . .
"THE COURT: All right. Let's just address what you just said when you said you 'do it all the time.' Give me, talk about that a little more.
"THE [PROSECUTOR]: So there are multiple cases where you will enter into agreements with defendants. And you enter into an agreement with one defendant, and the other attorney says: 'Don't go lower than what he got, I'll look bad.' And you kind of say: 'You got it.' It is essentially, you'll try to not make the defendant's attorney look bad. There are cases, many cases where defense attorneys have represented a defendant, defendant gets out, and the attorney says: 'Hey, can you not go lower than what your offer was to me, I'm going to look like an idiot.' It happens all the time.
"THE COURT: I don't care about whether the attorney looks like an idiot or not. It's an agreement that you made for the defendant, obviously. And have you ever done that, you've violated that agreement, so to speak?
"THE [PROSECUTOR]: No.
"THE COURT: Is this the first case?
"THE [PROSECUTOR]: This is the first case." (PCR Tr. at 197-200.)

Petitioner's attorney also asked defense counsel, on cross-examination at the PCR hearing, about defense counsel's recollection of events:

> "Q: Okay. Now, [the State's attorney] asked you about a conversation that you had with [the Prosecutor] referencing, you know, 'nobody else is going to get a fairer deal.' Do you recall those questions?
> "A: I do.
> "Q: So, fair to say it was your hope that none of the other co-defendants would get a better deal?
> "A: Yes, certainly.
> "Q: Okay.
> "A: I would have, as I said, we had a, during our discussions I did ask the State to consider a 'second degree' with a term of years. The long and short of it was that [the Prosecutor] was not in a position to offer that. And I sort of followed up with, you know: 'I don't want to see anybody, see this "kid" get life and somebody else get a better deal.' And 'he's cooperating.' 'He's basically making your case.'
> "Q: Right.
> "A: And he understood my concern. He indicated—again, I'm not quoting him, but it is a long time ago, seven years ago, that that wasn't going to happen.
> ". . .
> "Q: But he didn't make any specific promises to you?
> "A: As to what anybody else was going to get?
> "Q: Right.
> "A: No." *Id*. at 60-61.

The record clearly indicates that Petitioner, defense counsel, and the Prosecutor, all agreed that the Prosecutor promised at the time the Agreement was signed that Petitioner would get "the best deal." Said promise of "the best deal" again was discussed after DeBritto received his lesser sentence. When asked by defense counsel why DeBritto had received a much lighter sentence, the Prosecutor answered simply, "things changed." *Id.* at 80. Petitioner again raised this question just prior to his sentencing when he asked the Prosecutor why DeBritto had received a lighter sentence. The Prosecutor's answer to Petitioner at that time was "[b]ecause he played a lesser role than you did." *Id*. at 262.

It is clear that the best-deal promise made to Petitioner weighed heavily on Petitioner's mind and in his decision to cooperate with the State and to plead nolo contendere. Indeed, in his

affidavit, Petitioner expressly stated "[b]ut for these representations, I would not have agreed to plead guilty at this time." (Pet'r's Aff. ¶ 15.) Accordingly, this Court accepts that, at the time the Agreement was signed, the Prosecutor had agreed to give Petitioner "the best deal" if Petitioner cooperated with the State. (PCR Tr. 134.)

As previously stated, "[t]he remedy for a breach of a plea agreement is either 'withdrawal of the plea or enforcement of the plea bargain agreement.'" *DiPrete*, 845 A.2d at 283 (quoting *Freeman*, 115 R.I. at 535, 351 A.2d at 830). However, the record reveals that the hearing justice was unaware of the Prosecutor's oral promise when she sentenced Petitioner in accordance with that plea. Furthermore, although the hearing justice had a copy of the Agreement, she had not gone through the specific terms of the deal with the then-nineteen-year old Petitioner during the plea colloquy, including the fact that it was the entire Agreement and that no other outside conversations could be considered. While the better practice may have been for the hearing justice to inquire about whether Petitioner had been offered any promises or inducements in return for his plea, neither defense counsel nor the Prosecutor brought this to her attention, particularly during the sentencing hearing when it was obvious that circumstances had changed and that Petitioner would not be receiving "the best sentence" because two of the others received a term of years as opposed to a life sentence. This meant that the hearing justice was unaware of the oral agreement. Thus, the hearing justice was not in a position to consider whether the plea agreement still was valid when she sentenced Petitioner.

Notwithstanding the foregoing, it is undisputed that the Prosecutor made an oral promise to Petitioner that he later reneged upon. The Prosecutor testified that the reason he made the promise was because Petitioner was the first person who was willing to cooperate and provide "truthful testimony" against his co-conspirators before the Grand Jury—testimony that was elicited

just six days after Petitioner's arrest, four days after his arraignment, and on the very same day that his plea was accepted by the Court. The Prosecutor further testified that this was the first time that he ever had reneged upon such a promise. However, Petitioner fulfilled his part of the Agreement and did in fact testify, and his testimony led to the shooter, Burrell, eventually being convicted and sentenced to three consecutive terms of life imprisonment for the murders, and concurrent terms of life imprisonment for the firearms charges, to be served consecutive to life sentences for murder. Without Petitioner's witness testimony, the State may not have been able to convict Burrell for his heinous actions.

However, while the Prosecutor may not have had a responsibility to alert the hearing justice to the reneged promise at the sentencing hearing, the same cannot be said of defense counsel. It is clear from the record that this promise was very important to Petitioner. Indeed, as previously stated, Petitioner swore in his affidavit that he had been told that he "would be getting the 'best deal of all those charged[;]' . . . that this was the lowest that any sentence would go[;]" and that "[b]ut for these representations, [he] would not have agreed to plead guilty at this time." (Pet'r's Aff. ¶¶ 14-15.) *See also Neufville*, 13 A.3d at 610-11 ("When evaluating a claim for ineffective assistance of counsel in a plea situation, the defendant must demonstrate a reasonable probability that but for counsel's errors, he or she would not have pleaded guilty and would have insisted on going to trial' . . .") (quoting *Figueroa*, 639 A.2d at 500).

Clearly, neither Petitioner nor defense counsel were in a position to know that the Prosecutor ultimately would not keep his promise. *See Freeman*, 115 R.I. at 531, 351 A.2d at 828 (stating "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled"). However, once it became obvious that the Prosecutor did not intend to keep his promise, defense

counsel should have raised the issue at the sentencing hearing, thus allowing the hearing justice the opportunity to determine whether the plea should have been vacated at that point in the proceedings. The Court finds that defense counsel's failure to do so amounted to ineffective assistance of counsel.

Considering that Petitioner has demonstrated that he would not have agreed to plead guilty had he known that the Prosecutor would renege on his promise, the next issue to address is whether the outcome of a trial would have been different. *See Neufville*, 13 A.3d at 611 (stating that a defendant must demonstrate "that the outcome of the trial would have been different"). It is undisputed that Petitioner confessed to his involvement in the crimes before he was arrested. It also is undisputed that in light of this evidence, defense counsel advised Petitioner to plead to the crimes. However, had Petitioner declined this advice, he would have gone to trial and presumably would not have testified against the other defendants and against himself. Accordingly, a reasonable jury could have concluded that Petitioner was not guilty of first-degree murder and did not use a firearm in the commission of a crime of violence, as the record reveals that Petitioner did not fire the gun, did not even touch the gun, and ran from the scene of the crime after Burrell shot Martin.[3]

This Court is not minimizing the actions of Petitioner on July 30, 2012. He planned and participated in a robbery which resulted in three people being murdered, and he admitted to his

[3] Section 11-23-1 provides in pertinent part:

> "The unlawful killing of a human being with malice aforethought is murder. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing, or committed in the perpetration of . . . robbery . . . is murder in the first degree." Sec. 11-23-1.

involvement in a confession to the police and later in court testimony. His actions warrant a lengthy sentence.

Notwithstanding, the State needed Petitioner's testimony to prosecute the cases against the shooter and the other two defendants, and, without that testimony, the State might not have been able to convict those other defendants. Thus, the Prosecutor made a deal with Petitioner. It is undisputed that Petitioner fulfilled his part of the Agreement which resulted in four convictions, including his own. Nevertheless, due to a change in circumstances having nothing to do with Petitioner, the State was unable to obtain the life sentences of imprisonment it originally sought against Husband and DeBritto; instead, they both received lesser sentences of terms of years. It is the opinion of this Court that the State, through its Prosecutor, should not make promises to a defendant in order to obtain cooperation and then not comply with that commitment.

Since the Prosecutor's promise was not raised at the sentencing hearing, the hearing justice did not have the opportunity to hear from counsel and decide that issue. Thus, considering that the sentence was based upon first degree murder charges which only allow for a term of life imprisonment, this Court is constrained to vacate the plea.

IV

Conclusion

In view of the foregoing, this Court concludes that Petitioner's plea was given voluntarily, intelligently, and with an understanding of the nature of its consequences at the plea hearing. The Court further concludes that defense counsel provided ineffective assistance of counsel when he failed to alert the hearing justice about the promise made to Petitioner by the Prosecutor, particularly after it became clear that the Prosecutor did not intend to keep his promise. Accordingly, the Court grants the Petition for Postconviction Relief and vacates Petitioner's plea.

Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Donovann Hall v. State of Rhode Island**
CASE NO:	**PM-2018-7829**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 27, 2022**
JUSTICE/MAGISTRATE:	**McGuirl, J. (Ret.)**

ATTORNEYS:

For Plaintiff:	**Edward J. McEnaney, III, Esq.** **Robert McNelis, Esq.**
For Defendant:	**Judy Davis, Esq.**